

Interview of Judge James Emmett Barrett

From the Archives of the Wyoming Department of State Parks & Cultural Resources

Transcribed/ edited by Russ Sherwin, July 23, 2010, Prescott, Arizona

- Subject: Judge James Emmett Barrett
- Occupation: Senior Judge, U.S. Court of Appeals, Tenth Circuit. Hdg – Denver, Resident chambers - Cheyenne
- Born: April 8, 1922
- Interviewer: Mark Junge
- Interview date: July 8, 2010
- Place of Interview: Cheyenne, Wyoming
- Topics of interview: Life as a lawyer and judge; the Black Fourteen incident; landing an airplane.
- Source recording for transcription: set of four CDs from Wyoming State Archives



Photo: 1 - Judge Barrett, photo by Richard Collier, July 14, 2010

Transcriber's notes: I have added some reference footnotes to this transcript where I thought appropriate. In most cases I have deleted redundant ands, ers, uhs, buts, false starts, etc. If I deleted an entire phrase, I have inserted ellipses ... Where you find brackets [] I have added words for explanation or to complete an awkward sentence. Parentheses () are used for incidental comments or explanations. Words emphasized by the speaker are italicized.

Introduction

Mark Junge: Today is the 8th of July, 2010, and my name is Mark Junge. I'm in the home of Judge James E. Barrett, who was formerly the U. S. District Court of Appeals Tenth Circuit Court Judge in Wyoming. (Senior Judge on the U.S. Court of Appeals, Tenth Circuit.) I'm here at his home . . . in Western Hills, in Cheyenne, Wyoming. I thought what we could do, if you don't mind, is talk a little about your life, how you were raised, and maybe get some of your thoughts down on tape about your father and mother; about your education and going to law school; about your service in the army; your service as a judge—your public career; and then talk also about The Black Fourteen. And just for the transcriber's purpose here, the Judge has written an article about the Black Fourteen that appeared in the *Annals of Wyoming* historical magazine some years back. He's also given me another piece of paper, an article that appeared in *The Denver Post* in 1976 about his taking over an airplane after the pilot had a heart attack. I'm looking forward to hearing about that!

The Black Fourteen Incident

Mark Junge: Let's talk about the Black Fourteen. I read your article¹, and I read a whole bunch of other stuff on it. I still need to read a lot more. What is your overall perception of this whole incident in the scheme of history? How do you look at this, Judge?

Judge Barrett: Well, I'm more sympathetic with Eaton than many people are. I found him to be completely sincere, honest and forthright, intelligent, but maybe not very diplomatic. He was a strict disciplinarian. He believed that members of his football team should not participate in any kinds of protests. He had a rule that forbade that. And of course that rule would run up against the Constitution in terms of certain protests, but in this particular case, he applied it properly, I thought, and told 'em so. That is, that religion or protest against any religion or church had no place in a football scene, and they couldn't use the football fields to protest somebody's religion. He didn't arrive at that by reading any law or cases, but that was his line of thinking, and he told 'em that too.

Mark Junge: Didn't he revise that rule a little bit right after the incident?

Judge Barrett: He was told he had to, and he did have to. *Tinker vs. Des Moines School District*, which said that grade school kids could wear armbands protesting the Vietnam War, you know, had come down the same year as this happened, 1969.

Mark Junge: Now how aware were you of this—and Stan Hathaway—of this *Tinker vs. Des Moines School District*?

Judge Barrett: Oh, I was fully aware of it. So was Stan Hathaway. But we differentiated that—from applying the facts of the case, we came to different conclusions. In the case of the Black Fourteen, the protest was against the beliefs of the Mormon Church. They wanted to wear the armbands during the football game. They insisted on it. The position of the State was, including Hathaway—four lawyers on the Board of

¹ To read the article by Judge Barrett, go to: http://uwacadweb.uwyo.edu/RobertsHistory/barrett_black_14.htm

Trustees—was the University being an agency of the State of Wyoming could not permit any of its agents to use the football field to protest somebody's religious beliefs. No matter how racial they believed it to be. The State could not permit them to do that. That's the position that we took.

Mark Junge: Now you say you differed from Hathaway?

Judge Barrett: No, we saw it the same way. Hathaway wasn't as acquainted with Tinker vs. Des Moines as I was, but a couple of members of the Board of Trustees were.

Mark Junge: Who were the lawyers on the Board of Trustees?

Judge Barrett: Al Pence was one, from Laramie; Bill Jones from Wheatland; Eph Johnson from Rawlins; Mike Sullivan's father, from Douglas, Joe Sullivan. Although I didn't have contact with Joe particularly. Al Pence was pretty much the leader and he was well acquainted with the prohibition against—

Mark Junge: The Tinker provision? So were they in concert? Did they agree in concert or was there a split of opinion?

Judge Barrett: No, they all agreed.

Mark Junge: Oh, they did?

Judge Barrett: Yeah, they all agreed.

Mark Junge: I thought you said there was a difference of opinion.

Judge Barrett: No. they all agreed. When they were convinced that the Fourteen were insisting on wearing the armbands, during the game, that was conclusive then. When they realized that they couldn't talk 'em out of that, then they had to back the coach up at that point.

Mark Junge: Well I understand that Joe Geraud—wasn't he the president's lawyer or council? President Carlson's council?

Judge Barrett: Joe Geraud was representing the University, but he didn't get involved in the Black Fourteen.

Mark Junge: Well, what was Carlson's opinion of this?

Judge Barrett: Carlson accepted Hathaway and Pence's position. I don't personally believe that he was very solid on it. I think he had his misgivings.

Mark Junge: Where were you when you first heard about the arm band incident?

Judge Barrett: I got a call from Governor Hathaway about seven-thirty or eight o'clock on the morning of the game, which I think was the eighteenth, and he gave me a rundown of what happened. When he mentioned what they intended to protest, my first reaction was, "Well, the State can't permit them to use the playing field to do that."

Mark Junge: Oh, you weren't advising him all along? You found out about this the day of the game?

Judge Barrett: No, I wasn't brought into it 'till after the decision was made.

Mark Junge: Why not? You were the Attorney General?

Judge Barrett: I don't think that anybody—well, a snowstorm had occurred that day and it was really a blizzard. By the time that Stan got over there and so on, it would have been impossible for me to get there, so that's why I wasn't able to be at the meeting.

Mark Junge: Did you get a chance to meet William Waterman, and Charles Graves, and Smythe, and—what was the other one?

Judge Barrett: Wes Reeves.

Mark Junge: Reeves! Yeah. Did you meet with those guys in your office?

Judge Barrett: They came to my office just before the lawsuit was filed. That's the only time I

met them.

Mark Junge: What was their purpose?

Judge Barrett: Their purpose was to tell me that this was the last chance for the State to remedy the wrong before they filed the lawsuit. They were so cocky about their position legally; they were sure that Tinker vs. Des Moines controlled everything. I knew that it didn't. Anyway, they gave me, this was the last chance! And the command was that the football coach abolish his rule—he'd already done that; that they be restored to the football team without conditions; that they be allowed to wear the armbands in any manner they wished at any time; and that the head coach be fired. So I told 'em, "Well, I don't even have to contact my clients to tell you," and I represented all of them, "Your demands are not acceptable." So later that afternoon Waterman and the attorneys filed the lawsuit in the Federal District Court here. That's how it got started.

Mark Junge: Well, which demand was the most offensive to you?

Judge Barrett: I think probably the most offensive one was their demand that the coach be fired.

Mark Junge: Yeah, that's like in Wyoming at that time, with Lloyd Eaton as popular as he was, it seems like that would have been tantamount to deleting one letter from the English language!

Judge Barrett: That's right! The worst part of it is, they all agreed that he was a great coach.

Mark Junge: Well, I thought that Williams tried to talk to him. But there was something here it said, you talked about some evidentiary rules that prohibited Barrett—you—from asking Williams if he had refused to meet with Coach Eaton and Judge Kerr that day to discuss settlement of the lawsuit. And I'm a little confused about that whole procedure. Why was it evidentially unsound or illegal?

Judge Barrett: Because you can't introduce into evidence any terms of a proposed settlement. If it didn't take effect, it's privileged communication. So unless they brought it up, I

couldn't mention it.

Mark Junge: Was Williams even aware of this proposed settlement?

Judge Barrett: Oh, I don't think so. Because I know that he wasn't, because—this is entirely a separate thing, but I think I told you, I know the article says what Waterman said to me when I asked him about the meeting. He said, “There will be no such meeting. That was all there was.” I assumed that he had talked to the Black Fourteen about it. I didn't know, but I assumed he would have talked to his clients about a meeting. It turns out that he hadn't, because I found out later, I called those players—this is off the record here because it was not brought into the lawsuit—I called them and talked to them and found out not a single one of 'em had any recollection about a proposed meeting. Not a single one of 'em.

Mark Junge: Can I assume that you feel Waterman had his own personal agenda?

Judge Barrett: Yes, yes he did. He was going to make civil-rights history.

Mark Junge: So he, in effect, did not care about his clients enough to allow them to discuss it and come to a settlement.

Judge Barrett: That's my feeling.

Mark Junge: Is your take on it then, Judge, the idea that if Waterman had said to his clients, “Look you guys, we can settle this,” that it would have been taken care of?

Judge Barrett: Yeah, absolutely. Absolutely. I know it would have been.

Mark Junge: Okay, but what, on the other hand, I look at why couldn't Judge Kerr have issued a temporary restraining order to let this process go a little bit more?

Judge Barrett: You mean, issue it on behalf of the Fourteen?

Mark Junge: Yeah, let's see: somebody was asking for a restraining order.

Judge Barrett: The Fourteen. The players were. The Fourteen.

Mark Junge: Yeah. Why wouldn't Judge Kerr be in a mood to grant that 'till this could be worked out?

Judge Barrett: Well, if he granted it he would indicate that he was going to rule against the State of Wyoming. If he granted that on behalf of the Fourteen, he would be ruling against the defendants, the State. See the plaintiffs were the ones asking for the restraining order. That would be to prohibit the State from pursuing any further their dismissal from the football team. They wanted to be restored, see, that's what they were asking. They were asking for affirmative relief. To restore them to the football team.

Mark Junge: Well, wouldn't the restraining order just simply be, in effect, a restraining order until things could get sorted out, or is that an indication in the law profession that he's changed his mind?

Judge Barrett: No, unless the plaintiffs can show probable cause that they will succeed on the merits, you don't issue the restraining order.

Mark Junge: But didn't you and Hathaway and Carlson and everybody know that these students, some of them, were sympathetic to—I mean, not sympathetic to the University—but they were willing to come to some sort of an agreement because they wanted to play pro-ball and they wanted to go to school?

Judge Barrett: No, once they had retained an attorney, and Waterman was their attorney, and these locals, I couldn't talk to them about anything. I could never approach the Fourteen.

Mark Junge: Why not?

Judge Barrett: The law prohibits that! If you're in litigation, you cannot talk to the parties. You have to go through their attorneys.

Mark Junge: Okay. And your client was in opposition. Essentially, your client was the State of Wyoming, and the University, and President Carlson.

Judge Barrett: Right. And Head Coach Eaton, the Board of Trustees, and the Governor.

Mark Junge: Did you sense on Coach Eaton's part, Judge, that maybe he would have—given a little time to cool off—he would have changed his mind, or was he adamant?

Judge Barrett: No, he would never have changed his mind about his position concerning protests. He would never have changed. Years later, he said the very same thing. He said he would never have changed his mind.

Mark Junge: Even though this really did damage to his career and the State's football program?

Judge Barrett: He felt that—although he realized that his rule was overbroad, he recognized that—still when he applied it to the football field, he had no misgivings of any kind. Never permit football players to ever use the football field in a protest of any kind, really. That would be his position.

Mark Junge: Well you agreed with him, because you said in your article, "I recall that in my closing remarks to the appellate panel, I said, 'When and if the time should come that it is permissible to protest or criticize any religion or any religious beliefs on the playing field, that will be the time to terminate all NCAA events.'"

Judge Barrett: That's right.

Mark Junge: So again, to you it was a freedom of speech vs. a freedom of religion?

Judge Barrett: Right. Well, I don't know how many Mormon people, citizens of the state, residents of Wyoming, go to football games. I don't know how many Catholics go; I don't know how many Congregationalists or Baptists; but they certainly don't go there to find football players protesting their religion. And those players were agents of the State of Wyoming. According to the WAC² rules, the

² The **Western Athletic Conference (WAC)** was formed on July 27, 1962, making it the sixth oldest of the 11 college athletic conferences currently participating in the NCAA's Division I FBS (formerly Division **I-A**). The WAC covers a broad expanse of the western United States, with member institutions located in California, Hawaii, Idaho, Nevada, New Mexico, and Utah, plus the "non-western" state of Louisiana (traditionally associated with the

University is an agent of the State of Wyoming, so that would have been my position on it.

Mark Junge: Your interpretation of the Constitution is that, even though freedom of speech—Congress shall not—you know, the establishment clause, and the freedom of speech issue are both in that part of the Constitution. They're in the part of the Constitution together. Article 1 is it? Okay. So why would freedom of religion trump freedom of speech?

Judge Barrett: Well, because the Tenth Circuit Court of Appeals held, on appeal, that even Tinker recognizes that it is paramount to prohibit anybody from using the State's facilities for that purpose.

Mark Junge: Oh, did that come up in the Tinker decision?

Judge Barrett: The Tenth Circuit Court of Appeals, I quote them in my article, I quote the Tenth Circuit—

Mark Junge: Oh, here. Let me give you this. This article is what you're looking for.

Judge Barrett: Yeah, I'll show you where I quote the Tenth Circuit on Appeal. It's right over here on the last page:

(Mark Reads from Judge Barrett's article in *Wyoming History Journal* 68 (Summer, 1996), 2-7.)

"The final chapter in the litigation was written by the United States Court of Appeals, Tenth Circuit, when it affirmed the district court in *Williams v. Eaton*.⁷ The court held that the district court's findings of fact were not clearly erroneous and on the legal issue involving the First Amendment, the court ruled: '...we are persuaded that the Trustees' decision was lawful within the limitations of the Tinker case itself. Their decision protected against invasion of the rights of others by avoiding a hostile expression to them by some members of the University team. It was in furtherance of the policy of religious neutrality by the State. It denied only the request for the armband display by some members of the team, on the field and during the game. In those limited circumstances, we conclude that the Trustees' decision was in conformity with the Tinker case and did not violate the First amendment right of expression of the plaintiffs. . . . We do not base our holding on the presence of any violence or disruption... Instead, the trial court referred only to the mandate of complete neutrality in religion and religious matters as the basis for the court's ruling.' "

South). It is generally considered a "mid-major" conference, since it is not a member of the Bowl Championship Series (BCS) selection system.

Mark Junge: I see what you're saying. I mean, I see what the court's saying on this, and this is what the court decided, and I understand this is how you feel about it. But I'm just wondering if there's any precedent for freedom of religion to trump freedom of speech. Has that come up very often?

Judge Barrett: No. You won't find that—It's pretty rare, I'm sure of that, pretty rare.

Mark Junge: Okay, well who made the decision ultimately to fire—essentially fire—the Black Fourteen, since they were employees of the University?

Judge Barrett: The Board of Trustees.

Mark Junge: Okay, but did Hathaway have any influence in that? Did you?

Judge Barrett: Hathaway was ex-officio chairman of the Board and he was present. Yes, he did have a part in it. He didn't have a vote, but he was the key to it, really. The reason why the court didn't talk about Eaton's rights is because, by appealing to the President of the University and the Board of Trustees, they were bound by what their decision was. 'Cause the ultimate decision making power was in the Board of Trustees. So the court looked solely to what the Board of Trustees were relying upon.

Mark Junge: Who was the head of the Board of Trustees?

Judge Barrett: C. E. "Jerry" Hollon.

Mark Junge: Jerry Hollon. He passed away, didn't he?

Judge Barrett: He did, about a year and a half ago.

Mark Junge: Were you and he in agreement?

Judge Barrett: Oh, yes. Well, Jerry didn't understand the nuances about First Amendment, this and that, but he understood the position.

Mark Junge: Well, I get the impression that—and I know this man's gone now, and I don't

want to defame him—but I get the impression that the weak sister in all of this was President Carlson.

Judge Barrett: He wasn't very sure of himself, there's no doubt about that.

Mark Junge: So it was really Hathaway who probably made the decision, and the Board agreed because they had a tendency to agree? I'm looking for the strong person in this whole circumstance.

Judge Barrett: I would say that Al Pence, Eph Johnson, Bill Jones and Stan Hathaway, those four, stand out as being the most dominant, and they were all concentrating on the religious aspect of this thing.

Mark Junge: Now I want to ask you this question, and I don't want you to be offended by it, but do you think that in your heart of hearts, Judge, that football was so important in this state, such an important thing to the people of the state, and Eaton was held in such high esteem by people in this state, that there was no way that Hathaway and the Board could go against their coach?

Judge Barrett: No, I don't think that's true at all!

Mark Junge: Really?

Judge Barrett: No. I think their minds were very clear when they met. As a matter of fact, I think the inclination was to try to settle the thing and get it behind them. They met first with the coach and his staff and the athletic director. They wanted to talk to him a little further. By then he had taken the football team to a movie, which they do apparently before games, and he was resentful that they came to the theater to try to get him to leave, and he didn't leave.

Mark Junge: Who asked him to leave?

Judge Barrett: I don't recall who went there and asked him to. Probably somebody from the Board of Trustees.

Mark Junge: Right. Wouldn't that board member, if he had integrity, say, "Look, you can't tell the President of the University what you're going to do or not going to do. You must come to this meeting.

Judge Barrett: Well, he'd already been there for over an hour. But he wasn't told the purpose of it, unfortunately. But it wouldn't have worked as it turned out. When Hathaway and Carlson went into that adjoining room—and Stan Hathaway pointed this out to me—Stan Hathaway made it very clear to them that they could not permit them to protest on the field because of the religious aspect of it. He made it very clear that if they would forgo that, everything would be alright. No protest during the game against BYU.

Mark Junge: What if some students—and I'm just posing this conjecturally—what if some students who *weren't* members of the football team wanted to wear black armbands and go into the crowd and carry banners and watch the football game?

Judge Barrett: Oh, they could do that. They weren't representatives of the State of Wyoming. You see, the players were agents of the State of Wyoming. The WAC rules and regulations point that out very clearly. If you're on scholarship for the University, you represent that university. The University is an arm of the State of Wyoming. So there's no doubt that they were agents of the State of Wyoming. Now had they not been, they could do anything they please.

Mark Junge: But ultimately would you say, as a judge with all your experience, that for some reason that athletes are excepted from the general population when it comes to their right to protest?

Judge Barrett: Yes, anywhere but the football field, in this case. Had they wanted to wear the armbands all over the campus or wherever, they could do that. His rule was far too encompassing.

Mark Junge: And that's where you would have liked to have seen a more lenient rule, right?

Judge Barrett: Oh, yes. As a matter of fact, the Board of Trustees recognized that when they told ‘em they could continue their scholarships even after they were discharged. If they wanted to complete their education at the University, they’d get scholarships. They told ‘em that too.

Mark Junge: Now, there was a comment made by more than one person in the things that I’ve read that said that outside agitators were responsible for this. Do you believe that?

Judge Barrett: Well, Willie Black, who was the head of the Black Student Alliance, some people from Denver had come in to talk to him before this all happened. And he wrote that letter making the demand and hand-delivered it to Coach Eaton. So some of the people from Denver had met with him. I don’t know who they were. But they fed him this information about the Mormon Church.

Mark Junge: Was that the basis for calling out the National Guard?

Judge Barrett: No, I think it was a worry about some fisticuffs and stuff like that. They were very worried about whether there’d be an break of fighting or so on.

Mark Junge: Your point of view on this is really intriguing because you were on the inside of a lot of the negotiations, right? How do you feel about the reaction of the Faculty Senate and the Student Senate? They both said that the students needed to be reinstated and that they were basically opposed to what the Board of Trustees decided.

Judge Barrett: I don’t think they studied the issue very thoroughly. That’s my opinion. I would find it very difficult to have anybody make a serious contention that it’s agreeable to have agents of the State of Wyoming protest against somebody’s religion or religious beliefs or some church.

Mark Junge: Even if that religion was discriminatory?

Judge Barrett: Even if they *felt* that it was discriminatory, correct.

Mark Junge: Well, of course it was, right, because they didn't allow blacks into the priesthood?

Judge Barrett: Well, it's all according to how you deem this thing. See, if it's discriminatory under the Civil Rights Act, you'd be entitled to damages. And they sought damages. They sought punitive and actual damages of over a million dollars. So no, they certainly weren't entitled to any money as far as I'm concerned. And it would be difficult for me to understand why anybody would take exception to the fact that you can't permit that sort of thing to happen on the football field. And I'm talking about the confines just as the Tenth Circuit did. We're confining the facts entirely to that point. I'm not talking about 'em wearing the armbands around the campus, in the field house, or wherever. Matter of fact, they can do that. Eaton couldn't do a thing about it.

Mark Junge: But as representatives of the State of Wyoming as football players, if they wore the armband in the student union for example, they'd still be representing the State in a way in which the State maybe didn't want them to be involved.

Judge Barrett: Wouldn't make any difference. The atmosphere there is entirely different. People that attend a football game are captives to what's happening out on that football field. In the student union, nobody's captive. They're all free to come and go and do whatever they wish. And the Fourteen could go all over the campus as far as I'm concerned, classrooms or whatever, if they wanted to make their point.

Mark Junge: I'm just questioning this because this has come into my mind. So there's a big difference between wearing an armband when the code that the coach has created says that you shan't or you cannot protest—you can't do any kind of a protest—there's a big difference between that and carrying picket signs and wearing black armbands and marching through as a group, if the Black Fourteen did it, through the student union. Wouldn't they, Judge, still be protesting the essential problem of the church?

Judge Barrett: Oh, yes! No doubt about that.

Mark Junge: As agents of the State?

Judge Barrett: No, they're agents of the State only in relationship to the football part of it. That's the WAC rule. The scholarships were for football, you see. So the agency there is on the football team. It isn't anything else. It isn't whether they're students of the University.

Mark Junge: Okay, so it's okay to protest as a student, but it's not okay to protest as a football player.

Judge Barrett: Right! Not to wear the armbands on the football field knowing that the purpose of that is to protest against the Mormon Church.

Mark Junge: One of the ladies that was walking around the field house the day that Eaton met with the students said that it wasn't a very polite conversation that he was having with them. Now according to some reports, Eaton went in there and listened to their arguments and then responded, and there's other people who say, like on the Black Fourteen, they say no, he went in there and read us the riot act and said that we were going to go back on Negro welfare—you know. So what's the true story?

Judge Barrett: Well, I don't know. I talked to Eaton and Eaton said that one of the players—I can't remember his name right now—spoke up and said that he was studying to become a member of the Mormon Church. And Eaton's response to that was something to the effect, *"Isn't that something? You plan to join that church and abide by its beliefs for the rest of your life but you plan to demonstrate against it tomorrow."* (direct quote from Barrett's article) So I think that they agitated Eaton. They knew that they were doin' it too. And he wasn't used to having somebody confront him—football players confront him in that manner.

Mark Junge: Did you know him?

Judge Barrett: Oh, yes. I didn't know him very well, but I had talked to him before.

Mark Junge: Well, if there's blame to hand out on both sides of the issue, would you say that

maybe Eaton's, his problem was that he was too peremptory? He was too pugnacious in this and he should have maybe had a little more patience?

Judge Barrett: It could be. As far as the meeting out there in the field house, I wish that things had been handled a little different, including from their point of view, too. They shouldn't have been so abrupt with the guy. They knew him. They knew he was a strict disciplinarian. They could have handled that a little different than they did. Joe Williams in particular knew that.

Mark Junge: Well, I think he must have been under pressure though, Judge, because he went to Eaton in the first place and Eaton said no deal. You're not going to protest. My interpretation of all this is that Eaton (I think Mark means Williams here) goes back to his teammates and says we can't do this and they say, like hell we can't! We're going to do it. That'd be my impression. Because they came back and immediately Eaton reacted to it. So Joe Williams could have been a peacemaker but it didn't turn out that way.

Judge Barrett: I don't think there is any doubt about that. And there were other members of the Fourteen that could have been more diplomatic too. They weren't either.

Mark Junge: What was Willie Black's role in this whole thing?

Judge Barrett: He was the instigator. He fed 'em the information and got 'em riled up about this. Only one of 'em had any connection with the Mormon Church apparently. The others weren't affected by the Mormon Church in any way except by the beliefs. But if you go by that, practically every religion in the world would be able to protest something. Catholics could protest the beliefs of Baptists or Episcopalians, you know.

Mark Junge: They do! They just don't make it public! (Laughs)

Judge Barrett: Yeah, that's right.

Mark Junge: Well it seems to me that in the late sixties, in '69, that the whole—if I could draw

an analogy and say the cloud of civil rights that passed over the country just sort of whiffed right over Memorial Stadium, and I don't think that most people were in sympathy with the problems that were going on in other parts of the country and the problems that blacks were having. Am I right? Or am I just presupposing something I shouldn't be?

Judge Barrett: Probably right. Because we didn't have that problem in Wyoming. We weren't aware of it anyway.

Mark Junge: Do you think that's because we just didn't have very many blacks?

Judge Barrett: Yeah, I think that's true. I was sympathetic with the players in the sense that I don't think they understood the position of the State. Had they spent more time tryin' to explain that to 'em, it might have made a difference. But according to Stan Hathaway, he doesn't think that's true. He asked them whether they would return to the football team after the game and they said no. Then in particular, when he asked whether they would return with respect to firing Coach Eaton, nobody spoke up and said no, they weren't requiring that. They all were ordering that, that he be fired.

Mark Junge: Maybe because they felt they had to stick together at that point?

Judge Barrett: I think so, but they were just as arbitrary there as he was, as far as I'm concerned.

Mark Junge: How has this whole thing affected your life?

Judge Barrett: Well, I was so much involved in the litigation part of it, strictly the legal issue itself. But aside from that, I was sympathetic with the Fourteen because I know they weren't properly informed of the position of the State. I asked Joe Williams whether he had been notified of the State's position in the lawsuit. He said no. The lawyers hadn't told them anything about the State's position. Not a word. And as far as I'm concerned, that's pretty bad business when they didn't have the foggiest idea what the position of the State was.

Mark Junge: Was Waterman kind of a dictator among these people? Did Graves have anything to say about it, or Reeves or Smythe or any of those guys?

Judge Barrett: If they did have, they didn't let me know about it. Waterman's the only one that spoke up during the meeting in my office. He relied exclusively on Tinker vs. Des Moines. He was just cocky as could be about that. Didn't get the foggiest idea about the prohibition—about the establishment clause, you know.

Mark Junge: He impressed you as a person who was maybe bogged down with his own importance, is that it?

Judge Barrett: And he was going to make history of another civil rights case. He was using these fourteen to make hay. That's what he was doing.

Mark Junge: Was there a lot of racial tension at the time? Not prejudice necessarily, but was there any kind of racial tension? Did you feel that?

Judge Barrett: No, I didn't think so. Eaton certainly didn't think so. And Waterman said to me in the office—see, that complaint doesn't charge racial discrimination in any way shape or form. It's just first amendment. They don't say they were discriminated [against] because of their race—he said to me in the office, “There isn't a discriminatory bone in Lloyd Eaton's body.”

Mark Junge: Waterman said that?

Judge Barrett: You bet he did! And he'd spent ten days over there on the campus. But that's what he said.

Mark Junge: Was Waterman white or black?

Judge Barrett: He was black.

Mark Junge: Okay. Out of Detroit, right?

Judge Barrett: Pontiac, Michigan.

Mark Junge: What would make him say that?

Judge Barrett: Well, he spent a lot of time over there. He just volunteered it. As I said, there isn't a single complaint about racial discrimination.

Mark Junge: Well, if he said that Eaton didn't have a discriminatory bone in his body, then he must have felt that they could have come to some resolution of the problem!

Judge Barrett: Of course he knew they could, but he didn't want to.

Mark Junge: Did he say anything to give you an indication that he had an agenda?

Judge Barrett: Yeah, he did. When he came back, when I went up to say hello to him just before the hearing started, he didn't mention the meetings of any kind. I waited a little bit and finally I went over said to him, "What is the decision concerning the meeting?" "There will be no such meetings!" That was it. Period. That was the end of the conversation as far as he was concerned.

Mark Junge: Was Judge Kerr involved at an early date, or do you think he was aware of all of this that was going on?

Judge Barrett: No, he wasn't aware of that at the time. I went in and told his secretary that they had refused the meetings, so we were going to go ahead with the hearing. And I asked an assistant that I had to go in and call Eaton. Eaton was right by his telephone over at the athletic department. Had all of his staff there, all of the football coaches: Paul Roach, Fritz Shurmer, all of 'em. Ready to get into cars and come to Cheyenne. My assistant told me that he was very disappointed.

Mark Junge: This was Kerr's assistant?

Judge Barrett: My assistant. Jack Speight.

Mark Junge: Oh, Spate! Okay. So he said that—who was disappointed?

Judge Barrett: That Eaton was very disappointed.

Mark Junge: How'd you get along with Judge Kerr?

Judge Barrett: Oh, I got along fine with him.

Mark Junge: Was he a mentor to you of sorts?

Judge Barrett: Oh, I guess in a way, yes, he was.

Mark Junge: Because I think like his preceding judges in that position, he was the head of the Republican party wasn't he?

Judge Barrett: He was for some years, he sure was. Yeah.

Mark Junge: I think you've given us a lot here. I really appreciate it.

Judge Barrett: Yeah, just like the Tenth Circuit said there, I always confined it exclusively to the facts. Just the issues. When Lloyd Eaton did away with his rule, I remember meeting with him, and I said, "You *have* to do that. You can't restrain them from wearing armbands around the campus or at meetings or whatever." He didn't like it, but he recognized that he had to do that.

Mark Junge: And he changed it.

Judge Barrett: But you know, he received support from people like coaches Woody Hayes and Bear Bryant. Why? Because they're strict disciplinarians.

Mark Junge: Do you think times have changed?

Judge Barrett: Oh, yeah! I don't think there's any doubt about that.

Mark Junge: He'd never be allowed to get away with this today, right?

Judge Barrett: Well, you mean the same set of facts?

Mark Junge: Right.

Judge Barrett: Oh, I think on the same set of facts that he would get away with it.

Mark Junge: Well, I'm just saying that societal attitudes have changed now. The coach couldn't get away with being a strict disciplinarian as easily as he could have in the late 60s.

Judge Barrett: Probably not. Although I'm not that acquainted with what goes on today with football teams. I think most coaches are disciplinarians. I think just by nature that's what they are. Eaton was every bit that.

Mark Junge: Do you think that the football team would have gone on and done great things forever and ever? I think you mentioned something like that in your article.

Judge Barrett: Yeah, things would have been—I don't know how long Eaton would have stayed as coach, but he was relatively young. He had a great staff! Boy, what a great staff he had!

Mark Junge: And he had some great athletes too.

Judge Barrett: Yeah, and that staff was able to recruit those kind of players. It was no accident. To think that little old Wyoming was able to get those kind of players, athletes, to come to Wyoming, really is kind of amazing when you stop and think about it. He had far less money than any of these other big time schools. He didn't have any money to work with at all, you know. The fact that the Fourteen went on with their education shows that they were not ignorant people. They sat in the jury box during the hearing that we had, and I'd look up and look at the fourteen of them, I'd think, "My God! What a box-full of manhood here!"

Mark Junge: You mean these guys were good physical specimens?

Judge Barrett: Oh, yeah! And how could any football team survive without that kind of material. The fact that they were so adamant about—all of 'em made the point they wanted to play on the field because the pro scouts were grading them. Joe Williams had three different outfits lookin' at him.

Mark Junge: Three different pro teams?

Judge Barrett: Yeah. Had they accepted that meeting with Eaton and Judge Kerr, there still were four games left. So they would have had four more games to display their wares before those pro scouts. And that's what they wanted to do! So, had Waterman informed them of the prospects of the meeting, they would have accepted it. I'm sure that every one of 'em—well, except one. When I talked to 'em on the telephone, just one player said he would not have attended the meeting. Just one player.

Mark Junge: Do you remember who that was?

Judge Barrett: I think his name was—he was from Denver—I can't think of his name.

Mark Junge: Oh, Don Meadows?

Judge Barrett: No, Meadows came back to the team.

Mark Junge: Hysaw? Willie Hysaw?

Judge Barrett: It could have been Hysaw.

Mark Junge: So you talked to all of these guys?

Judge Barrett: I did this long after the cases. It just festered me so badly to think that Waterman didn't inform them of the possibility of the meeting, that I wanted to find out for my own personal purposes whether or not he had notified 'em. So I got the telephone numbers of all of 'em from the athletic department and I called 'em, and with the exception of one player, they all said they would have. They didn't know about the meeting. They weren't told by Waterman or anybody else about the meeting. Had they been told, they would have attended the meeting.

Mark Junge: Now the meeting we're talking about, just for the record, is which meeting?

Judge Barrett: The one between Judge Kerr sitting in and Coach Eaton and his assistant, with the

individual players.

Mark Junge: Okay, so was it Kerr that was trying to get everybody together?

Judge Barrett: Judge Kerr would have sat in on the meetings.

Mark Junge: Who was the one who was trying to get them together one last time though?

Judge Barrett: Well, I suggested the meeting and Judge Kerr said, “Will you find out if Coach Eaton is willing to do that?” So I went in the side room and called and talked to him. Not only was he willing, he was anxious and he was looking forward to it. He said he would get his entire staff and have ‘em right there by the telephone. He said, “What time would the meetings be?” and I said, “Well, I don’t know yet because Mr. Waterman has to approve it.” So he was right there at his office with his staff when Jack Spate called. They were all there ready to come to Cheyenne.

Mark Junge: And Jack told ‘em what?

Judge Barrett: Jack had to tell ‘em that there will be no such meeting. Yeah.

Mark Junge: He was relaying Waterman’s instructions. And every one of the Black Fourteen except for this one would have come to the meeting?

Judge Barrett: Absolutely. Every single one would have come.

Mark Junge: How does that make you feel?

Judge Barrett: Makes me feel—I was mad. I was mad about it because I think a lot of these civil rights cases are drummed up. I think they go out of their way to find the avenue for these cases. And that’s what Waterman was doing with the University of Wyoming. He was going to make racial discrimination, civil rights history against the University of Wyoming. That was his only purpose in this thing. He had no more care for the Fourteen than the man in the moon.

Mark Junge: Well, apart from this case, do you feel that the blacks in the State at this time and

at the University had legitimate gripes?

Judge Barrett: Legitimate gripes?

Mark Junge: About not only about the church, but about the fact that—well, for example, Lloyd Eaton told Mel Hamilton that he shouldn't get married to a white girl. I mean, those kind of things.

Judge Barrett: Oh, I don't approve of those kind of things. No.

Mark Junge: So you recognize that there were problems that they had to endure.

Judge Barrett: Oh, yeah. I'm sure that they do.

Mark Junge: I didn't think you were ignorant!

Judge Barrett: Oh, no. I'm sure about that, yeah. No, I was sympathetic with their plight. I know they have a tough row to hoe. It isn't easy being over here at the University of Wyoming with so few fellow blacks. So I admire the people, the players, who stick with the program and make the best of it they can, get their education. No I have no problem with blacks as such. I was in sympathy with the Fourteen as a matter of fact. I thought they were pretty innocent people. They didn't understand the complexities of this thing. Nobody spent any time tellin' 'em anything either. And I felt badly about that. I would like to have been able to talk to 'em, but of course I couldn't do it.

Mark Junge: Well, your words are important because I think that this is an important event in Wyoming history.

Judge Barrett: Mr. Graves, on a television program, made the remark that they tried several times to settle this case, is what he said. That is an absolute falsehood! They never at one time ever contacted me about settlement. *Never!* The only time I had any contact with 'em was that one meeting when Waterman laid the rules down about what we had to do. Not a single time did they offer to meet any settlement of any

kind. Never did.

Mark Junge: At the time can you remember how you viewed your position? As a go-between, a mediator?

Judge Barrett: If it hadn't been for the lawsuit, I'd have been in maybe a position to do that. But they didn't give me that opportunity.

Mark Junge: Well Judge, this has been very valuable. You've spent almost three hours of your life talking about this.

Judge Barrett: That's alright, Mark. I appreciate that and the opportunity.

Mark Junge: Well, it's been a pleasure. Are you still handling any cases at all?

Judge Barrett: I handled some cases submitted on the briefs, with Judges Brorby and Anderson of Salt Lake City. I read briefs and vote, but I don't write opinions any longer.

Mark Junge: You don't research?

Judge Barrett: No, I don't do that either, but I do read the briefs. And I understand the law and I vote. I vote on the opinions.

Mark Junge: Do you like doing that?

Judge Barrett: Oh, yeah. I always have a number of 'em pending at any given time.

Mark Junge: What's the best thing about being in the law?

Judge Barrett: Oh, I think you touch so many fields of everyday life.

Mark Junge: And how about the people you meet?

Judge Barrett: Oh, you meet some wonderful people over the years. You bet.

Mark Junge: Have you met any presidents?

Judge Barrett: President Nixon. President Kennedy, I met him.

Mark Junge: Oh, you did?

Judge Barrett: Yeah, I met him. I was back there on surveillance matter, as a matter of fact. I had a chance to meet him.

Mark Junge: What's your impression?

Judge Barrett: Oh, he was a terrific—he had a great personality.

Mark Junge: I think that was the reason why he won, why he beat Nixon. What's the future going to hold for you? You going to keep on hearing cases? Excuse me, not hearing them, but reading briefs?

Judge Barrett: Yes, I'll do that as long as I'm able to get around. I want to do that.

Mark Junge: Is that pro bono?

Judge Barrett: No, I'm still getting my salary as a senior judge.

Mark Junge: Oh, full time salary? Not a retirement salary?

Judge Barrett: They have two classes of judgeships. You're an active judge meaning that you have to serve for sixteen years or to age sixty-five, and then after that you become a senior judge. A senior judge can do as much or as little work as he wishes, and in my case I think I told you, for five years I wrote more opinions than the active judges. So I've always continued to work.

Mark Junge: But you're 88, almost! Well, no you just turned 88!

Judge Barrett: I just turned 88 in April.

Mark Junge: So, you going to hit a hundred?

Judge Barrett: I don't want to. I'm not anxious to reach a hundred, I'll tell you that. You think you'd want to reach a hundred, Mark?

Mark Junge: Not if I felt bad. I'd want to just cut it off.

Judge Barrett: Well, Mark, you do a great job.

Mark Junge: I'm so happy that I got a chance to talk to you, and your mind is so sharp!

Judge Barrett: Well, thank you, Mark. It's been a pleasure to be with you.

Mark Junge: Well, same here.

